HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W/P. M/B No. 1653/2001
Narendra Nath Pandey
Vs.
Director General Medical
Family welfair Lucknow

Approved for reporting.

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~~Not approved for reporting~~

Dated of decision 16.2.2006

Initial of Judge

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Writ Petition No. 1653 of 2001 (M/B)

Narendra Nath Pandey S/o Sri Jaidhari Deo Pandey, R/o village Jamgovon Pandey, P.O.Kaithi, District Mirzapur (Sonbhadra).

.....Petitioner.

Versus

1. Director General, Medical Health and Family Welfare, Uttar Pradesh Lucknow.
2. Additional Director of Health Uttar Pradesh.
3. Joint Director (Maleriya) Uttar Pradesh, Lucknow.
4. Assistant Director (Maleriya) Nainital Region, Rudrapur, District Nainital.

.... Opposite Parties

Sri S.S. Yadav, learned counsel for the petitioner.
Learned Standing counsel for respondents.

HON'BLE RAJESH TANDON, J.

16.02.2006.

By the present writ petition the petitioner has prayed for a writ or certiorari quashing the order dated 02.1.1990 by which the period of the appointment of the petitioner was not extended. The writ petition was initially admitted on 16-3-1990 by the Allahabad High Court.

According to the case of the petitioner he was appointed as Adhoc Insect Collector (Keet Sangrah Karta) vide appointment letter dated 24-2-1987. However, he joined on 7-3-1987 as will appear from the joining letter (Annexure No. A-2) to the writ petition.

The appointment of the petitioner although was six months only but the same was extended from time to time. According to the case of the petitioner, after completing one year he was also given increment in the year 1988 and his name was also included in the provident fund scheme from the year 1988. However, he continued till 08-2-1990 and thereafter the period was not extended and, as such, he challenged the said order in the writ petition and ultimately the stay order was granted. At the time of filing of the writ petition following interim order was granted.

"The argument of learned counsel for the petitioners is that no retrenchment compensation was given prior to the termination of services of the petitioner in view of this argument. We suspend the operation of the order dated 02-2-90 provided the post on which the petitioners were appointed are still continuing."

Counter affidavit has been filed by the state and in the counter affidavit it has been stated in para-7 that the petitioner was unwilling worker. He was warned for his negligence both verbally and also in writing. Further it has been admitted that the

Government Servants, under rules, are bound to contribute to their G.P.F. after completion of one year. However, it was admitted that the service of the petitioner was extended from time to time. However, the petitioner was terminated on 31-1-1990. A perusal of the aforesaid facts it is evident that the petitioner is still continuing in service right from his appointment i.e. 7-3-1987.

Learned counsel for the petitioner has submitted that the petitioner is entitled for regularization in pursuance of the Uttar Pradesh Regularization of Ad Hoc Appointments (On Posts Outside The Purview Of The Public Service Commission) Rules, 1979. Rule 4 provides the regulatization of Adhoc appointments and cut off date has been fixed as 01-1-1977 the said rule was extended from time to time and ultimately by the second amendment of 1989 the date was extended. Rules 4 and 9 of the said rules are quoted below:

"4- Regularisation of ad hoc appointments –

(1) Any person who-

(i) was directly appointed on ad hoc basis before Junuary 1, 1977 and is

continuing in service as such on the date of commencement of these rules;

(ii) Possessed requisite qualifications prescribed for regular appointment at the time of ad hoc appointment; and

(iii) Has completed or as the case may be, after he has completed three years service as such, shall be considered for regular appointment in permanent or temporary vacancy, as may be available, on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant rules or orders.

(2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and other categories shall be made in accordance with the orders of the Government in force at the time or recruitment.

(3) For the purpose of sub-rule (1) the appointing authority shall constitute a Selection Committee.

(4) The appointing authority shall prepare an eligibility list of the candidates, arranged in order of seniority, as determined from the date of order of appointment and if two or more persons are appointed together from the order in which their names are arranged in the said appointment orders, the list shall be placed before the Selection Committee along with the character rolls and such other records of the candidates as may be considered necessary to assess their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in sub-rule (4)

(6) The Selection Committee shall prepare a list of the selected candidates,. The names in the list being arranged in order of seniority, and forward it to the appointing authority.

9- ***Extension of the rules-*** *The provisions of these rules shall apply, mutatis mutandis, also to*

any person directly appointed on ad hoc basis on or before May 1, 1983and continuing in service as such as the date of commencement of the U.P. Regularisation of ad hoc Appointments (on posts outside the Purview of the Public Service Commission) (Amendment) Rules, 1984"

As will appear from the aforesaid rule that the initial cut off date was 1-1-1977 lateron it was extended as October, 1 1986 and further continued on the date of commencement of The Uttar Pradesh Regularization Of Ad Hoc Appointments (On Posts Outside The Purviews Of The Public Service Commission) Rules, 1979 which came into force on 7th August 1989. The grievance of the petitioner is that since he was taken in the job on 7-3-1987 he shall be deemed to be continuing in service on the date of the commencement of second amendament Rules which was in force on 7th August 1989.

Taking into consideration the aforesaid fats and circumstances the writ petition deserves to be allowed. The impugned order dated 2-1-1990 is quashed. A writ of certiorari is issued quashing the order dated 02/01/1990. However the matter is sent

back to Director General, Medical Health and Family Welfare, Dehradun for passing the appropriate orders in accordance with the rules. The petitioner shall file the certified copy of this order giving in detail the claim of the petitioner, who shall pass the appropriate order taking in to consideration the aforesaid rules within a period of three months from the date of filing of the certified copy of the order. However, since the petitioner is still continuing in service since 1987 and thereafter by virtue of the interim order granted by the Allahabad High Court, he will continue on the said post till the appropriate orders are passed by the authority concerned.

Subject to aforesaid, writ petition is allowed. No order as to cost.

(Rajesh Tandon.J)

16-2-2006
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